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June 8, 2018

VIA E-MAIL (CELA@FEC.GOV)

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Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20463

Re: Response re MUR 7356

To Whom it May Concern:

On behalf of Respondent Manhattan Neighborhood Network ("MNN"), I respectfully submit our response to the complaint filed with the Federal Election Commission ("FEC") in MUR 7356.

The Commission should find no reason to believe that MNN violated the Federal Election Campaign Act of 1971 ("FECA" or "Act") and dismiss Mr. Loren's complaint as procedurally defective and shielded by the FECA "media exemption."

Background

MNN is responsible for administering the cable television public access channels in Manhattan, New York. (Affidavit of Daniel Coughlin ("Aff.") at ¶4.) MNN provides first-come, first-served access to all Manhattan residents, including Chris Gethard. (*Id.* at ¶6.) MNN provides a broad range of programming, including shows featuring robust debate of political and social issues relevant to Manhattan residents. (*Id.* at ¶6.) MNN does not control the content of any of the shows which are produced on its public access channels by independent producers, whether by Mr. Loren or Mr. Gethard.

Mr. Loren's complaint should be dismissed because it does not describe a violation of the FECA

The complaint is procedurally defective since it does not provide a "clear and concise recitation of the facts which describe a violation." 11 CFR §111.4(d)(3). The complaint does not describe how Mr. Gethard's Election Day coverage included impermissible "express advocacy" of the election or defeat of a clearly identified candidate. The only specific mention of any candidate in the complaint is a quote attributed to Mr. Gethard saying, *inter alia*, "[W]e're going with our gut here. Hilary Rodham Clinton has won. We are officially first." This statement, by itself, does not constitute "express advocacy"; rather, it merely represents Mr. Gethard's optimistic, but inaccurate, projection of the winner of the 2016 Presidential campaign. There is nothing in the complaint that alleges that anyone made an appeal to vote for or against a specific candidate. Therefore the complaint should be dismissed.

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The complaint should be dismissed because MNN is subject to the FECA "Media Exemption"

The FECA exempts the costs of producing "any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication" from the definition of campaign expenditure "unless such facilities are owned or controlled by any political party, political committee, or candidate." 52 U.S.C. § 30101(9)(B)(i).

The legislative history of the FECA recognizes that the "media exemption" "assures the unfettered right of newspapers, television networks, and other media to cover and comment on political campaigns." H.R. Rep No. 93-1239, at 4 (1974). The FEC conducts a two-part analysis to determine whether an entity fits within the "media exemption." AO 2016-01. First, the media entity must not be owned or controlled by a candidate, political committee or political party. Second, the media entity must be performing a legitimate press function in disseminating the complained-of statement. AO 2000-13, see also *Federal Election Commission v. Massachusetts Citizens for Life*, 479 U.S. 238, 250-51 (1986).

MNN satisfies both criteria. MNN is an independent, non-profit organization which is not owned or controlled by a candidate, political committee or political party. (Aff. ¶5.) Therefore, the first requirement is met.

MNN operates the public access channels in Manhattan, New York and provides Manhattan residents with first-come, first-served access to its production facilities and airtime. (*Id.* ¶6.) MNN's sole connection to Mr. Gethard's 2016 Election Day Special is as a provider of studio access, production equipment and airtime to individuals wishing to create programs of interest, including the Election Day Special. (*Id.* ¶9.) To the extent Mr. Gethard's show was dispensing political commentary, such activity is considered a "legitimate press function" and, hence, within the "media exemption." The "media exemption" is a complete defense to Mr. Loren's complaint. See *Federal Election Commission v. Phillips Publishing, Inc.*, 517 F. Supp. 1308, 1313 (D.D.C. 1981).

Indeed, Mr. Loren would have been informed of programming preemption and offered to reschedule his airtime. MNN reserves an absolute right to preempt program time. Typically, MNN's program director or the production facilitation department will call the producer who booked the time slot and tell them their spot was preempted and reschedule their time slot. (Aff. ¶¶10.) Therefore, to the extent Mr. Loren is complaining that his show needed to be rescheduled, MNN reserves the absolute right to preempt programming spots.

Conclusion

For the reasons stated above, the Commission should find there is "no reason to believe" Mr. Loren's allegations and dismiss his complaint.

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AFFIDAVIT OF DANIEL COUGHLIN

RE: MUR 7356

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

DANIEL COUGHLIN, being duly sworn, hereby deposes and says:

1. I am the Executive of Manhattan Neighborhood Network ("MNN"), Respondent in the above-captioned matter.
2. I submit this Affidavit in response to the complaint filed with the Federal Election Commission ("FEC") in MUR 7356.
3. I have full knowledge of the facts set forth herein.
4. MNN is responsible for administering and operating the public access television channels in Manhattan, New York.
5. MNN is an independent, non-profit organization, and is not controlled by a candidate, political committee, or political party.
6. MNN provides first-come, first-served access to its production facilities and airtime for all Manhattan residents.
7. In its operation of the public access channels in Manhattan, New York, MNN provides Manhattan residents with its production facilities and airtime to produce a variety of programming, including on political and social issues relevant to Manhattan residents.
8. MNN does not control the content of any of the public access shows that appear on our network, including Chris Gethard's.

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9. MNN's sole connection to Mr. Gethard's 2016 Election Day coverage is as a provider of studio access, production equipment, and airtime to individuals wishing to create programs of interest, such as the Election Day Special.

10. MNN reserves an absolute right to preempt program time. Usually, MNN's program director or the production facilitation department will call the producer who booked the time slot and inform them that their spot was preempted and reschedule their time slot. Here, MNN would have informed Mr. Loren that his time slot would need to be rescheduled.


DANIEL COUGHLIN

Sworn to before me on this
8th day of June 2018

Svetlana Milis
Notary Public

SVETLANA MILIS
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01M16197331
Qualified in Richmond County
Commission Expires December 1, 2020

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